

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Larry Godfrey,	:	
	:	
Petitioner	:	Civil Action 2:10-cv-00770
	:	
v.	:	Judge Smith
	:	
Edward Banks, Warden	:	Magistrate Judge Abel
	:	
Respondent	:	

**Order Adopting Report and Recommendation**

Petitioner Larry Godfrey, a state prisoner, brought this action under 28 U.S.C. §2254 for a petition for writ of habeas corpus. This matter is before the Court on Godfrey's September 9, 2010 objections (doc. 5) to Magistrate Judge Mark R. Abel's August 30, 2010 Report and Recommendation (doc. 2) that the petition be transferred to the United States Court of Appeals for the Sixth Circuit as a successive petition. Godfrey argues that this, his third, habeas corpus petition is not successive because his previous petitions were not adjudicated on the merits.

The petition here alleges that Godfrey's 1997 guilty plea convictions for gross sexual imposition and felonious sexual penetration were unconstitutionally obtained because:

- He was denied a speedy trial;
- He was denied a lawful indictment by grand jury;
- He was subjected to double jeopardy;
- His guilty plea was unlawfully induced without his understanding the nature of the offense and the consequences of his plea;

- He was denied the right to confront his accusers;
- He was denied his privilege against self-incrimination;
- He was denied the effective assistance of counsel;
- He was denied the right to be free from unreasonable search; and
- He was denied due process of law.

As the Magistrate Judge found, petitioner filed two previous petitions. *Godfrey v. Beightler*, 2:01-cv-397-EAS-NMK and *Godfrey v. Warden Noble Correctional Institution*, 2:04-487-GLF\_NMK. Both were dismissed. Godfrey appealed those dismissals to the United States Court of Appeals for the Sixth Circuit, which affirmed. The fact that the earlier petitions were dismissed because they were barred by the statute of limitations does not establish that this petition is not a successive petition for writ of habeas corpus. Under the provisions of 28 U.S.C. § 2244(b)(3)(A) and (C) a second or successive petition can-not be filed in the district court unless petitioner files an application in the court of appeals and that court issues an order authorizing the filing of the petition.

Accordingly, this Court hereby OVERRULES petitioner Godfrey's objections to the Report and Recommendation (doc. 5) and TRANSFERS this case to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. §1631.

s/ George C. Smith  
George C. Smith  
United States District Judge